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Item 54

Decision **DRAFT DECISION OF ALJ KOTZ** (Mailed 8/11/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for purposes of revising General
Order 96-A regarding informal filings at the
Commission.

Rulemaking 98-07-038
(Filed July 23, 1998)

**THIRD INTERIM OPINION ADOPTING CERTAIN REQUIREMENTS
REGARDING ADVICE LETTER FILING, SERVICE,
SUSPENSION, AND DISPOSITION**

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**THIRD INTERIM OPINION ADOPTING CERTAIN REQUIREMENTS
REGARDING ADVICE LETTER FILING, SERVICE,
SUSPENSION, AND DISPOSITION**

1. Summary

In today's decision, we adopt another part of the previously proposed revisions to General Order (GO) 96-A, which comprehensively governs utility tariffs (including their content, form, and publication, and the advice letters by which they are amended).¹ The rules revisions adopted today (which will eventually be codified in GO 96-B) are set forth in the Appendix; they chiefly concern the authority we are delegating to our staff to suspend the effectiveness of an advice letter that might otherwise take effect by operation of law 30 days after filing. We also adopt certain requirements to facilitate advice letter review, such as use of the Internet for service of advice letters and related documents.

We intend to adopt and implement these rules revisions now, for advice letters filed on or after 90 days after the effective date of today's decision, and without waiting for adoption of GO 96-B as a whole. As with our prior interim

¹ In prior interim opinions (Decision (D.) 01-07-026 and D.02-01-038) in this rulemaking, we adopted rules governing (1) use of the Internet to publish tariffs, (2) representations by a utility regarding any of that utility's tariffed services, and (3) notice that a telecommunications utility must provide affected customers when it proposes a rate increase, a withdrawal of service, or certain kinds of transfers. The intense review of advice letter procedures in this rulemaking also brought to light an unintended distinction between different types of local exchange carriers when entering into customer-specific contracts. By D.01-11-059, we modified the contract filing procedure established in D.94-09-065 so as to apply that procedure uniformly to all local exchange carriers.

opinions (see footnote 1), we believe adoption and implementation of these rules revisions will benefit consumers, and should not be delayed.²

2. Procedural Matters

As relevant to today's decision, we have received several rounds of comments on our original proposals, set forth in the order instituting this rulemaking. Then, on February 14, 2001, the assigned Administrative Law Judge (ALJ) issued a draft decision (the "2001 Draft") in which the ALJ invited comment on extensive revisions to the originally proposed GO 96-B. Following these comments and replies, further comments were invited on specific aspects of the Telecommunications Industry Rules. We continue to consider the various Industry Rules and the General Rules that complement the planned tier structure for advice letter review in the respective utility industries. Meanwhile, today's decision not only puts in place another part of the necessary groundwork for final adoption of GO 96-B, but also improves the handling of advice letters under current practice. The comments specific to today's decision are discussed in Section 4 below.

3. Discussion

All of the rules we adopt today are based on the 2001 Draft. In fact, many of the rules are identical in substance to proposed rules (albeit numbered

² Until we take final action on GO 96-B, the requirements adopted today will be treated as an Appendix to GO 96-A, as we did with the rules adopted in D.01-07-026 and D.02-01-038. The various interim rules will be published at the Commission's Internet site together with the rest of GO 96-A. To the extent that a provision of GO 96-A is inconsistent with the interim rules, the interim rules prevail. For example, Rule 4.6 of today's decision supersedes those provisions in Parts IV and V of GO 96-A setting "regular notice" for most advice letters as 40 days between the filed and effective dates.

differently) in the 2001 Draft; where we have further revised our proposals, these revisions often resulted directly from comments on the 2001 Draft. Our discussion follows the order of the rules as set forth in the Appendix.

3.1 Rules 1—1.2 (Applicability; Code of Ethics; Computation of Time)³

These rules are not controversial, but they address several points that are not always clear under current practice. For example, Rule 1.2 states that a filing deadline is extended to the next business day if the last day for performing an act does not fall on a business day. This explicit statement should avoid unnecessary inquiries and requests for extension of time.

Rule 1 distinguishes advice letters from formal proceedings before the Commission, such as an application. Because advice letters never involve evidentiary hearings, any matter involving such hearings is excluded from coverage under these rules. Finally, we note that although GO 96-B will cover periodic and occasional utility reports (“information-only filings”) as well as advice letters, these reports are beyond the scope of the rules adopted today.

In response to comments, we have added a paragraph to Rule 1 to more explicitly delineate how the rules adopted today relate to previously adopted rules on advice letters generally and to specific types of advice letters.

³ Rules 1—1.2 are drawn without substantive change from General Rules 1.1, 1.5, 2, and various definitions under General Rule 3 in the 2001 Draft.

3.2 Rules 2—2.2 (Cover Sheet, Form, and Content of Advice Letters)⁴

These rules are intended to remove guesswork for those who have the job of preparing or reviewing advice letters. The “cover sheet” (Rule 2.1) concisely summarizes all critical information about a given advice letter. The content requirements help ensure that the advice letter is complete and easy to review, and limit the need for information requests after the advice letter is filed. We are currently receiving almost 5000 advice letters per year, a volume that represents an increase of well over 1000 per year since this proceeding began. With so many advice letters to deal with, under the severe time constraints we discuss later, both our staff and third parties must be able to analyze advice letters rapidly. Rules 2.1 and 2.2 provide important tools to that end.

We have revised the 2001 Draft versions of these rules to remove references to other rules not adopted at this time. We have also made several of the content requirements more specific, again with the intent of enabling the utility to easily assemble all the information it needs to submit, and enabling reviewers to easily determine whether all needed information was submitted. Through these means, the routine advice letters (the vast majority) can be processed with a minimum of fuss, and the few problematic advice letters can be readily identified.

⁴ Rules 2—2.2 are drawn with minor revisions (discussed in the text) from General Rules 5.5 and 5.6 in the 2001 Draft.

3.3 Rules 3—3.4 (Advice Letter Service Lists, Service by Internet, Filing and Serving Advice Letters and Related Documents)⁵

These rules enable utilities to distribute their advice letters effectively and efficiently. They also enable persons interested in particular utilities or particular subjects to obtain relevant advice letters easily. The rules provide for maximum reliance on service by Internet: Persons desiring such service need only provide the utility with their e-mail address when they ask to be included on an advice letter service list. A person receiving an advice letter by e-mail commits in turn to serve that person's protest or response to the advice letter by e-mail on the utility filing the advice letter.

As compared to the 2001 Draft, the rules adopted today rely to a far greater extent on the Internet for service of advice letters and related documents. Thus, persons on the utilities' advice letter service lists will be able to receive an advice letter on the same day that it is filed with the reviewing Industry Division. Of course, those persons who for any reason do not want to receive advice letters electronically may choose to receive them by regular mail.

Another significant change concerns the date of filing, from which various other important dates, such as the deadline for protests, is determined. Under the 2001 Draft, the date of filing was defined as the date when report of the advice letter appeared in the Commission's Daily Calendar. While generally that report would appear within one or two business days of the reviewing Industry Division's receipt of the advice letter, delays of a week or more

⁵ Rules 3—3.4 are drawn from General Rules 3.2, 4.3, 4.4, 5.4, 7.1, and 7.2 of the 2001 Draft. Most provisions are substantively unchanged; the major revisions are discussed in the text.

sometimes occur. Such indeterminacy creates problems both for utilities (who must take steps to implement any actions proposed in an advice letter), customers (who might be planning service changes on the basis of an advice letter), and anyone who might want to protest or otherwise respond to an advice letter. Under the rules adopted today, an advice letter is filed on the date that the reviewing Industry Division receives the advice letter. The new definition eliminates the indeterminacy in relying on the Daily Calendar. Moreover, since a utility must serve its advice letter on or before the date that it files the advice letter with the reviewing Industry Division, and since our rules entitle “any person” to request inclusion on a utility’s service list, we think the Daily Calendar should not be treated as the primary means for obtaining notice of an advice letter. Nevertheless, the Daily Calendar will continue to note the “filed” date of all advice letters received by the Industry Divisions.

These rules do not provide at this time for Internet filing of advice letters with the reviewing Industry Division.⁶ Because of the critical importance of maintaining the accuracy and completeness of Commission records, and the sheer volume of advice letters received by the Industry Divisions, the implementation of Internet filing is more complex than accepting service by Internet. Consequently, we have authorized the Industry Divisions to explore implementation issues with the utilities in the respective industries. (See Resolution M-4809 (June 19, 2003).) Under this resolution, the Telecommunications Division has conducted a pilot program and is currently

⁶ Both the number and bulk of advice letter-related documents (protests, etc.) are much less, as compared to advice letters themselves; consequently, the Industry Divisions will accept these related documents by electronic filing.

using CD-ROMs for advice letter filing and storage; the Telecommunications Division also accepts protests sent either by letter or e-mail. (See Resolution T-16807 (December 5, 2003).) We expect and encourage all the Industry Divisions to conduct workshops, pilot programs, and other cooperative efforts to enable a smooth and orderly transition from the current paper filing system to increased reliance on the Internet and electronic storage media. Consistent with this general approach and with Resolution M-4809, Rule 3.3 authorizes the Executive Director to develop procedures for electronic filing.

3.4 Rules 4—4.8 (Advice Letter Review and Disposition)⁷

These rules enable most advice letters to be deemed approved and to go into effect within 30 days of filing. They also authorize the reviewing Industry Division to approve or reject any advice letter for which the approval or rejection (“disposition”) would be a “ministerial” act, as that term is used and discussed in D.02-02-049. Because advice letters, by design, generally concern matters that are not expected to raise factual or policy issues, we expect the large majority of advice letters will be subject to Industry Division disposition.⁸

Some advice letters are problematic. For example, material factual issues may surface as the result of protests or staff review. Alternatively or additionally, protests or staff review may disclose an underlying disagreement

⁷ Rules 4-4.8 are drawn from General Rules 3.2, 3.5, 3.11, 3.12, 3.13, 4.3, 4.4, 7.4, 7.4.1, 7.4.2, 7.4.3, 7.5, 7.5.1, 7.5.2, 7.6, 7.6.1, and 7.6.2 of the 2001 Draft. Many provisions are substantively unchanged; the major revisions are discussed in the text.

⁸ There is also a substantial group of advice letters, especially in the telecommunications industry, for which an effective date less than 30 days from filing is authorized by statute or Commission order. The review, disposition, and effectiveness of this group of advice letters are not changed by today’s decision.

regarding the proper interpretation of a statute or Commission order relevant to the advice letter. In these instances, a Commission order will sometimes be necessary to resolve the merits of the controversy. Advice letters, being informal, are generally ill-suited to resolving material factual issues; further, the interpretation of a statute or Commission order may require consideration by the Commission itself.⁹ Consequently, these rules must address in detail the situation where problems arise that cannot be readily resolved, even though that situation occurs only in the small minority of advice letters.

Problematic advice letters follow two basic procedural paths. First are those advice letters that are resolved without reaching the merits. For example, where the reviewing Industry Division finds that an advice letter raises material factual issues requiring evidentiary hearing, the Industry Division will reject the advice letter without prejudice. Similarly, if the reviewing Industry Division believes the action proposed in the advice letter is one that the Commission must consider in a formal proceeding, the Industry Division will reject the advice letter without prejudice.¹⁰ In both these circumstances, the utility itself may choose to withdraw the problematic advice letter. Whether the advice letter is rejected

⁹ The existence of controversy does not preclude Industry Division disposition. Informal means are sometimes successful in clearing up factual issues, and the reviewing Industry Division may always reject factual or legal arguments that are clearly erroneous. The Industry Division may also resolve questions of interpretation to the extent that the Commission's rules or directions, applicable to the utility, give adequate guidance.

¹⁰ For example, historically, most requests for approval of a rate increase had to be presented by formal application and a proper showing at an evidentiary hearing. There are currently exceptions to this rule, notably for many telecommunications carriers and smaller water and sewer system utilities, but the energy utilities, large water utilities, and some local exchange carriers are still generally required to file a formal application.

without prejudice or withdrawn, the utility has the option of filing an application or filing a new advice letter with modifications intended to remove the objections to the prior advice letter.

Second are those advice letters whose merits are addressed by the Commission. When the Commission considers the disposition of an advice letter, it does so by resolution. For these advice letters, the reviewing Industry Division prepares a proposed resolution and circulates it for public review and comment, as provided by Pub. Util. Code § 311(g)(1) and Rule 77.7 of our Rules of Practice and Procedure.

Dealing with a problematic advice letter under either procedural path will generally require more than the 30 days provided in the initial review period. During that time, the reviewing Industry Division must analyze the advice letter and any protests (which are not due until the 20th day of the initial review period). In such a compressed timeframe, the reviewer is hard-pressed simply to determine that there are significant problems with an advice letter, much less for the reviewer to prepare and issue a written disposition and for the utility and protestants to review and comment on that disposition.¹¹ However, the reviewing Industry Division must take some action in the initial review period because otherwise, under Pub. Util. Code § 455, the utility may put many advice letters into effect 30 days after filing.

When this situation arose in the past, it was dealt with mostly by informal agreement between the utility and the reviewing Commission staff that the utility would not put the advice letter into effect while the advice letter was

¹¹ Advice letters also arrive in droves: 2-3 dozen per month received by the Energy and Water Divisions, 2-3 hundred per month received by the Telecommunications Division.

under active review. Rarely, the Commission would order a formal “investigation and suspension” of the advice letter, pursuant to § 455.

This historic practice originated when the annual volume of advice letters numbered in the hundreds rather than the thousands. The new rules update and augment historic practice to better deal with current conditions. There are two fundamental improvements, both of which are keyed to the 30-day initial review period: “deemed” approval of advice letters that are not problematic; and staff authority to suspend the effectiveness of advice letters that are problematic. These procedures will have wide applicability even after exempting advice letters that may become effective in less than 30 days.¹²

In brief, we have delegated to the reviewing Industry Division the authority, pursuant to § 455, to suspend the effectiveness of an advice letter for up to 120 days past the 30-day initial review period, in order for the division to complete its review and prepare and issue an appropriate disposition. On the other hand, any advice letter that is either subject to § 455 or implements a previously approved rate increase, and that is not suspended, will be deemed approved at the end of the initial review period.

These two innovations will improve the effectiveness of advice letter review while increasing the efficiency of that review. Utilities will have the assurance of regulatory approval, within the 30 days contemplated by Pub. Util. Code § 455, for those advice letters (much the majority, we believe) that are

¹² See note 8 above. The rules also do not change procedures previously adopted for specific kinds of advice letters, even where those procedures are inconsistent with the procedures contained in these rules. On the other hand, rules previously adopted to govern advice letters generally, such as GO 96-A, are superseded by the rules adopted today to the extent they are inconsistent.

subject to that section and that raise no significant issues. The problematic advice letters will be designated quickly and reasons for the suspension set forth in the suspension letter. We intend by these means to minimize uncertainty, avoid misunderstanding, and ensure timely disposition of even problematic advice letters.¹³

The rule that we adopt to implement “deemed” approval of advice letters is substantively unchanged from the 2001 Draft. Regarding suspensions by our staff, we already have considerable experience as we authorized this procedure on an interim basis by Resolution M-4801 (April 19, 2001), modified and affirmed as modified by D.02-02-049. We made the interim procedure subject to further modification by order in this proceeding, and we do so today.

Specifically, we limit the delegated suspension authority to a single suspension, namely, the period of up to 120 days expressly provided by Pub. Util. Code § 455. That statute also provides for “a further period [of suspension] not exceeding six months,” but we reserve to the Commission itself the power to impose this “further period.”¹⁴ We make this change because we think that,

¹³ The divisions that review advice letters currently have an internal goal of 90 days from filing within which to process and close them. Given the sheer volume of advice letters, the divisions have done very well in terms of meeting their goal. For example, out of a total of 3,847 advice letters filed in calendar year 2003 to the Telecommunications Division, 75 (or less than one out of 50) were open and pending for more than 90 days as of January 5, 2004. We plan to further improve the timeliness of advice letter disposition, and today’s decision will provide the reviewing Industry Divisions with important tools to that end.

¹⁴ In other words, § 455 authorizes suspensions of 120 and 180 days, to run consecutively from the expiration of what we call the initial review period, i.e., the first 30 days following the filing of an advice letter. Thus, under the statute, the Commission has up to 330 days to process an advice letter. Under the rules we adopt today,

Footnote continued on next page

generally speaking, five months (the initial review period plus a suspension of up to 120 days) is a reasonable amount of time for the reviewing Industry Division to prepare a proposed disposition.

One disposition option open to the Industry Division is to propose a further period of suspension if there is good reason to believe that further consideration of the advice letter will lead expeditiously to a clear approval or rejection on the merits. However, we think the more likely conclusion, where material issues raised by an advice letter remain in doubt after five months, is that the action proposed by the advice letter requires review in a formal proceeding, possibly with an evidentiary hearing. In that situation, a rejection without prejudice is preferable to continued suspension.

We have also refined the rules in the 2001 Draft by directing the reviewing Industry Division to publish an advice letter suspension status report at the Commission's Internet site. The report will reflect new suspensions, changes in status of currently suspended advice letters, and other pertinent information.

however, we intend to have an actual or pending disposition of virtually every advice letter within 150 days of filing. While we retain the authority under § 455 to order a "further period" of suspension, we intend to exercise that authority only when it appears the additional suspension will be the most expeditious way to resolve the advice letter on the merits. However, if our deliberation on a resolution presented by the Industry Division extends beyond 150 days after filing of the advice letter, the suspension is automatically extended for a further period (not to exceed 180 days) until we act on the resolution.

3.5 Rules 5—6 (Review, Rehearing, Modification, Extension of Time to Comply With Advice Letter Disposition)¹⁵

These rules concern events following Industry Division or Commission disposition of an advice letter. As with a decision on a formal matter, the disposition of an advice letter may be appealed. The appeal of an Industry Division disposition is by request for review by the Commission. Where the original disposition of an advice letter was by Commission resolution, the appeal is by application for rehearing.

Generally, the person requesting review of an Industry Division disposition would be the utility or a protestant; third parties who had notice and an opportunity to participate in review of the advice letter normally should not be allowed to voice objections that they could have made earlier. There are exceptions, however, where third parties either lacked notice or had no reason to participate earlier (for example, if they supported the advice letter as written but the advice letter was rejected or approved conditionally). The rules allow third party requests for review where the third party is able to show an interest in the advice letter and to explain why the third party should be entitled to appeal. Third party challenges will be summarily rejected if entitlement to appeal is not demonstrated.

The rules also contain procedures for petitioning to modify a resolution on an advice letter or for requesting an extension of time to comply

¹⁵ Rules 5—6 are drawn with minor revisions (discussed in the text) from General Rules 7.7—7.8 in the 2001 Draft.

with such a resolution. The procedures generally mirror those for modifying or requesting an extension in regard to a decision in a formal proceeding.

4. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on August 31, and reply comments were filed on September 10, 2004, after the ALJ granted a short extension in light of the Labor Day holiday.

The following individual parties filed comments: SBC California; SureWest Telephone; The Utility Reform Network (TURN); and Verizon California Inc. Three groups of parties filed joint comments: California Telecommunications Coalition (Coalition);¹⁶ Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison Company (collectively, Energy Utilities); and Small LECs.¹⁷

¹⁶ Coalition's membership includes AT&T Communications of California, Inc., The California Association of Competitive Telecommunications Companies (CalTel), Cox California Telecom, LLC, MCI, Inc., New Edge Network, Inc. d.b.a. New Edge Networks, PacWest Telecomm, Inc., Time Warner Telecom of California, LP, and XO California, Inc.

¹⁷ Small LECs include Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Global Valley Networks, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

Of the foregoing parties, all but Small LECs filed reply comments. The following additional parties filed reply comments: Mountain Utilities; California Water Association (CWA); and our Office of Ratepayer Advocates (ORA).

In general, all of the comments were thoughtful and constructive, and we have made many changes to the rules and accompanying discussion, as appropriate. Below we summarize the comments and our responses, beginning with the general comments and then dealing with comments on particular rules.

General Comments

Many commenters asked for clarification of the relation between the rules adopted today and existing rules in GO 96-A or specific decisions and resolutions for particular types of advice letters. We have added discussion at various points in this opinion and have made clear in the adopted rules that these rules prevail over any inconsistent provision of GO 96-A. However, these rules do not change the review, disposition, and effectiveness of advice letters that, by statute or Commission order, may become effective less than 30 days after filing, nor do these rules change procedures previously adopted for specific kinds of advice letters, even where those procedures are inconsistent with the procedures contained in these rules.

We also direct that these rules shall apply to advice letters filed on or after 90 days from the effective date of today's decision. The 90-day lead time should be adequate for preparation and training purposes. We encourage consultation between stakeholders and the respective Industry Divisions. The Industry Divisions may hold workshops or use any meeting format they deem appropriate.

Coalition expresses concern that today's decision forces a "one-size-fits-all" approach on a type of utility request, namely, advice letters, that has become

extraordinarily diverse, particularly in the telecommunications industry. We disagree. Coalition's concern is well-taken, but it is properly directed at our current advice letter rules in GO 96-A. Before this rulemaking, we had not comprehensively revised GO 96-A since its original (1962) adoption; consequently, GO 96-A is badly out-of-date. A participant in the Commission's advice letter process today may have to research many resolutions and decisions besides GO 96-A in order to be sure that the participant is aware of all the relevant orders applicable to the type of advice letter of concern to the participant. Our goal in creating the new GO 96-B is to be truly comprehensive, which means that we must codify both the rules applicable to all advice letter and the rules applicable to particular types of advice letters.

We are coming close to that goal, but it will be fully achieved only with the next decision after today's. The next decision, expected to close this rulemaking, will compile the rules adopted in the three interim orders, and will adopt rules specific to the Energy, Telecommunications, and Water Industries, together with the remaining General Rules. At that point, GO 96-B will wholly supersede GO 96-A and will provide what is lacking today, namely, a comprehensive guide to advice letter practice.

Mountain Utilities, a very small electric company, expresses concern that to the extent that any of the adopted procedures lead to increased burdens and expenses for utilities, these burdens and expense will fall disproportionately on the smaller utilities. In response, we note that many of the rules, such as those increasing reliance on the Internet and certainty of dates of filing, will reduce utility costs. We have also modified certain of the proposed rules, as discussed later, in the interest of greater flexibility and simplification. Consequently, we

believe all stakeholders in the advice letter process, including both large and small utilities, will see many benefits from the rules adopted today.

Comments on Rules 1-1.2

These rules proved uncontroversial. However, as discussed above under General Comments, we have added a paragraph to Rule 1 to clarify the applicability of the rules adopted today. SureWest and Small LECs raise a concern about the memorialization of State holidays in Rule 1.2, where we say that a list will be maintained at our Internet site (www.cpuc.ca.gov, under “About CPUC”). The concern is that by our specificity we might restrict our options for future site re-designs. We will retain the rule as written because we think people will benefit from a direction about where to look for this list. Updating that direction may become necessary, as sometimes happens with other incidental information that may be contained in rules,¹⁸ but this form of updating does not require a formal proceeding.

Comments on Rules 2-2.2 (Advice Letter Contents)

Various utility commenters asked questions about specific items to be contained in the advice letter “cover sheet” (Rule 2.1), which is a short summary of the advice letter. We note that the cover sheet rule is an instance where we have had to produce a comprehensive list, some items of which may not be applicable to all industries or to all utilities within a given industry. We have indicated this partial applicability by including the parenthetical phrase “(where applicable)” in several items. Because of industry-by-industry variations, we

¹⁸ Organizational names change within the Commission from time to time, as do office addresses, phone numbers, even job titles. (The Executive Director of the Commission was formerly the Commission’s “secretary.”)

direct the respective Industry Divisions to develop and publish sample cover sheets in time for utilities to incorporate those sheets in advice letters governed by the new rules.

The other concern expressed by utilities about the cover sheet is that it may be too detailed. Our response is that the cover sheet will involve some judgment calls about particular items, such as (6) [citation to statutes and Commission orders related to the substance of the advice letter], although most of the items are straightforward. We stress, however, that the effort by the utility on the cover sheet should greatly smooth the process of review and disposition. If the reviewer can determine at a glance that, e.g., the advice letter is a compliance filing in response to a specified order and ordering paragraph, the likelihood of a prompt disposition unencumbered by information requests is much improved. We are striving to do our job within an extremely tight frame for advice letters, and we see the cover sheet as an important tool for that purpose.

We have modified several items in Rule 2.2 (advice letter form and content) in response to comments. We delete the requirement at the beginning of Rule 2.2 that the utility discuss any aspect of the advice letter “as needed”; the requirement is too vague to provide much guidance. We have eliminated from Rule 2.2(2) the requirement to include copies of existing tariff sheets that the utility proposes to cancel; as Energy Utilities and others point out, existing tariff sheets are readily available, for most utilities at their Internet sites (as required by an earlier order in this proceeding).¹⁹ We also adopt the change, requested by

¹⁹ Coalition requests another modification to Rule 2.2(2) concerning the way changes to existing tariff sheets are shown in the advice letter. Rule 2.2(2) gives the utility a choice of either filing a “redlined” version or marking changed matter by an appropriate symbol along the right-hand margin of the sheet. GO 96-A permits only the latter

Footnote continued on next page

Energy Utilities and others, not to require workpapers and supporting analysis to be served with advice letters. As modified, Rule 2.2(6) excuses the utility from serving these supporting documents if they are voluminous but requires the utility to serve them within two business days upon request. Coalition points out that under D.96-03-020, competitive telecommunications carriers are exempted from the requirement to provide supporting analysis and workpapers. Again, we believe that Coalition fears a reversal of Commission precedent where we neither express nor intend that outcome. A carrier that claims it is exempt under D.96-03-020 need only cite to that decision to satisfy Rule 2.2(6).

We largely reject modifications requested to two other items in Rule 2.2. First, Coalition objects to the requirement in Rule 2.2(3) that an advice letter say whether its approval would result in a deviation or conflict, withdrawal of service, or more or less restrictive conditions. This requirement comes without substantive alteration from the first paragraph of Part III.C of GO 96-A. Most of the information seems highly pertinent in the context of a tariffed service, so we will adopt Rule 2.2(3); however, as Coalition suggests, we will delete “conflict” because its meaning is unclear.

Second, several utilities object to the content requirements in Rule 2.2(4) for new services. TURN supports the rule as proposed, asserting that it provides “vital information.” As proposed, the rule requires the utility to describe the new service’s impacts (if any) on existing customers, other services, rates, competition, privacy, and affiliate transactions. We developed this list of topics

method for showing changes. Coalition interprets Rule 2.2(2) as requiring both redlining and marginal annotation. We think the plain language of Rule 2.2(2) is to the contrary, and in this respect we adopt it as proposed.

because in fact all of the topics have arisen as matters of concern in connection with new services proposed by advice letter in recent years.

We strongly support innovation, and we believe that the overall impact of new services has been and will continue to be benign regarding all of these topics. Nevertheless, new services may raise new policy issues, or old issues in new contexts. Some new services, indeed, may require consideration through formal application. On balance, we believe both utilities and the public will be well served by requiring sufficient information in the advice letter to highlight the implications or potential unintended consequences of a new service. We therefore will adopt Rule 2.2(4) as proposed, with one change. Some commenters argue, and we agree, that the information requirements may be excessive at least with regard to fully competitive services. Accordingly, we have modified the rule to apply to a new non-competitive service (or in the case of a telephone utility, a new Category 1 or 2 service).

Comments on Rules 3-3.4 (Filing and Service)

Rule 3.1 requires utilities to maintain at least one service list and to include on their list anyone who so requests. The rule also encourages utilities to maintain separate lists for different types of advice letters, and at TURN's suggestion we have modified the rule to require that utilities who do create separate lists identify them at the utilities' Internet site.

TURN would like to see utilities required to maintain separate service lists, but we do not regard such a requirement as universally appropriate. Moreover, some utilities (such as Verizon) prefer the convenience of serving all their advice letters on a single service list. Given the ease of review that we hope cover sheets will provide (see our earlier discussion of Rule 2.1), we will not require utilities to create separate service lists at this time.

Coalition asks about the relationship of Rule 3.1 to the Notice provisions of Part III.G of GO 96-A. Part III.G lists persons or entities that are entitled to receive a utility's advice letters, generally without having had to specifically request them. To that extent, Rule 3.1 and Part III.G are complementary, and Rule 3.1 directly implements the requirement in Part III.G.4 that the utility "furnish" its advice letters to "[o]ther interested parties having requested such notification." In short, consistent with Rule 3.1, utilities will continue to serve everyone specified in Part III.G.

Rule 3.2 is our rule on service by Internet. There are two controversies regarding this rule. First, some utilities object to having to make alternative service if service by Internet fails. The objection relies on two arguments, that the utility is not responsible if someone fails to maintain a current e-mail address, and that the utility may not know that transmission over the Internet was unsuccessful. ORA points out that there are many reasons, besides a faulty e-mail address, why transmission over the Internet might fail; these reasons include power outages and Internet Service Provider failures. We agree with ORA, and we also modify Rule 3.2 to make clear that it does not impose an obligation on the sender of a document over the Internet to investigate whether transmission was successful. Instead, the serving party need make alternative service under Rule 3.2 only when the serving party receives notification that, e.g., the e-mail message was not received or the receiving party could not open or download an attached document.²⁰

²⁰ This modification to Rule 3.2 is consistent with the approach we take in R.04-01-005, our electronic service rulemaking.

Second, TURN argues that if service by Internet is unsuccessful, the 20-day protest “clock” should tolled until the advice letter is reported in the Daily Calendar. The utilities oppose TURN on this point. We reject TURN’s argument. A principal goal of this proceeding is to make the advice letter process more certain and transparent. To revert to the Daily Calendar in certain circumstances, as argued by TURN, would deeply compromise that goal. Moreover, TURN’s remedy does not fit the ailment. The protest clock would be tolled even if service was successful on all but one party on the utility’s service list, and even if the utility served that party by messenger on the next day.

Rule 3.3. governs filing of advice letters and related documents. We are adopting two modifications supported by virtually all commenters. First, we are directing the Industry Divisions to accept electronic filing of protests and other advice letter-related documents; we stop short of adopting electronic filing for advice letters, as the sheer number and bulk of the advice letters we receive pose technical problems that are as yet unresolved but that the Industry Divisions will be addressing in consultation with stakeholders.

Second, Rule 3.3 as proposed in the ALJ’s draft decision used the phrase “submitted for filing” instead of “filed” or “filing.” We agree with commenters who object to the phrase as confusing and creating uncertainty about when filing occurs. Accordingly, in Rule 3.3 and elsewhere in the rules and in this Opinion, we refer to “filed” or “filing” instead of “submitted” or “submittal.” The filing of a document, however, does not preclude its later rejection without prejudice if the document, when filed, omitted required contents or otherwise did not conform to our requirements.

Several utilities object to provisions in Rule 3.3. that refer to “filing with” or “receipt by” the reviewing Industry Division. These provisions are not

intended to change current advice letter practice; instead, they underscore that the receipt point within the Commission for advice letters and related documents is not the Docket Office (which files documents in formal proceedings), but the respective Industry Divisions. We will not modify these provisions of Rule 3.3.

Rule 3.4 pertains to service of advice letters and related documents (apart from provisions specific to service by Internet, see discussion of Rule 3.2 above). The provision in this rule drawing most comment was that requiring most utilities (with exceptions for sewer and small water utilities) to make paper service on ORA. The requirement was prompted by ORA's concern about the potential impact of large numbers of bulky advice letters served on ORA by Internet. We have modified the rule in response to comments to give more flexibility to ORA, and we expect that ORA can work out mutually-agreeable service arrangements with utilities so that the convenience and advantages of service by Internet are fully realized.

Rule 3.4 also contains service requirements for an advice letter that would modify a Commission resolution. The utility must serve (among others) any person who had been served with the resolution, but as Coalition notes, the service list for resolutions is not always readily available after the Commission has acted on the resolution. In response, we are ordering that Commission resolutions that dispose of advice letters contain an attachment listing all persons served with the resolution. Since our resolutions are published at our Internet site, this order should ensure the public availability of resolution service lists.²¹

²¹ Although our order today, because of the scope of this rulemaking, is specific to advice letter practice, Commission staff preparing resolutions for our consideration should include a service list attachment in resolutions wherever that may be appropriate.

Rules 4-4.8 (Advice Letter Review and Disposition)

Rule 4.1 defines “protests” and “responses” to an advice letter and sets the deadline for filing them as 20 days after the date of filing of the advice letter. In response to Energy Utilities, we have modified the definition of “response” such that the term now denotes unconditional support for the relief requested in an advice letter. We think the modification provides greater clarity: Someone who generally or in principle supports an advice letter but believes a condition must be imposed for the advice letter to be approved should be treated as a protestant.

Rule 4.2 enumerates and discusses the grounds on which an advice letter may be protested. TURN and Coalition would modify the rule to expressly allow policy objections as a ground for protest. TURN argues, “It is undeniable that this Commission sets important public policy and that such action is inappropriate for the advice letter process. Therefore, protestors must have this argument at their disposal to ensure an advice letter is rejected.” Coalition argues that the list of protest grounds in Rule 4.2 should be merely exemplary; in other words, a protest could be based on any “valid” ground besides the grounds enumerated. Verizon and SBC oppose the expansion of protest grounds urged by TURN and Coalition.

We have modified Rule 4.2 to allow protest on policy grounds but only in limited circumstances. It is true, as TURN asserts, that the Commission typically creates new policy in the context of a formal proceeding. To the extent that an advice letter seeks relief that entails a policy determination not previously established as to the subject of the advice letter or the utility filing it, a protestant ought to be able to argue the policy question should be taken up in a formal proceeding. One of our modifications to Rule 4.2 permits a protest on this ground.

The above circumstances are unusual. More frequently, an advice letter follows law and policy that have already been established by statute or Commission order. A protestant may not make “policy” arguments as a way to indirectly attack prior Commission determinations; however, a protest may properly allege that the utility in its advice letter has misapplied established policy. We have modified our list of protest grounds to make this point more clearly. Also, we add the following sentence to Rule 4.2: “A protest may not rely on policy objections to an advice letter where the relief requested in the advice letter follows rules or directions established by statute or Commission order applicable to the utility.”

Rule 4.3 requires the utility to reply to all protests and allows the utility to reply to responses. Energy Utilities would like to eliminate the requirement to reply to protests, and to prohibit a further filing by protestants where the utility does respond. We make the latter modification, as there simply is not time in the advice letter review process to allow multiple exchanges between utilities and protestants. We continue to require utilities to respond to all protests. This requirement is part of GO 96-A (see Part III.H) and continues to make sense. It saves time for Industry Division staff, who would otherwise have to contact the utility if the utility deemed a reply unnecessary (or did not receive the protest) but staff had questions after reviewing the protest.

Rule 4.4 allows the Industry Divisions to consider a late-filed protest. Verizon would require a showing of good cause by the protestant as a condition of consideration of the late filing. We prefer to allow discretion to the Industry Division on this procedural point. Unquestionably, the divisions may summarily reject a late-filed protest where no or poor excuse for the late filing is offered.

Rule 4.5 concerns Industry Division requests for additional information and the use of advice letter supplements. As recommended by many utilities, we have modified the rule to allow “substitute sheets” for making minor corrections to an advice letter. We also allow major changes by “supplement”; both substitute sheets and supplements must be served on everyone upon whom the relevant advice letter was served.

Several utilities requested five business days, rather than five calendar days, within which to respond to requests for additional information. We will adopt this change. We note that Rule 4.3 gives utilities five business days to respond to protests.

Rule 4.6 pertains to the initial review period, suspension of advice letters, and advice letter status reporting. In response to comments, we have clarified the proposed rule to reflect the fact that many advice letters may go into effect in less than 30 days, and that the Commission’s deliberation on a resolution disposing of an advice letter may not exceed the statutory “further period” of suspension, i.e., 180 days. We also add a clarification, consistent with D.02-02-049, that if the further period ends before the Commission rejects or otherwise acts on the advice letter, the advice letter (if subject to § 455) becomes effective by operation of law on the day after the further period ends.

Rule 4.7 pertains to Industry Division disposition. As requested in comments, we require the Industry Divisions to include “deemed approvals” in their reported advice letter dispositions at the Commission’s Internet site. We also have clarified the rule as it relates to advice letters to which the “initial review period” in Rule 4.6 does not apply. Finally, we clarify that there will be a written disposition by the Industry Division for each advice letter subject to disposition under Rule 4.7; the written disposition will state its basis whenever

the Industry Division rejects an advice letter or approves a protested advice letter. There need be no statement of basis for approval of an unprotested advice letter.

Rule 4.8 pertains to Commission resolutions disposing of advice letters. The sole comment (by Coalition) seeks clarification of what happens if the Commission fails to act on the resolution within the time provided in § 455. In response, we added a sentence to our rule regarding suspensions. (See discussion of Rule 4.6 above.)

**Rules 5-6 (Review of Industry Division Disposition;
Application for Rehearing of Resolution;
Petition for Modification; Request for Extension)**

There was little controversy regarding these rules. We are making one major change, but the change is supported by both TURN and utilities. In the ALJ's draft decision, a person seeking to challenge an Industry Division disposition first had to request reconsideration by the Division Director. The reconsideration procedure seems to us both cumbersome and unnecessary. We delete the procedure; as modified, Rule 5.1 allows a utility or protestant to directly request Commission review of an Industry Division disposition.

Rule 5.1 also allows 3rd parties (i.e., those who had not filed a protest) to request Commission review if the 3rd party had been unable to file a protest or in fact had supported the advice letter. TURN argues that 3rd party participation is appropriate under some circumstances; Coalition would prefer not to allow such participation but considers it acceptable if we stress that the 3rd party must make an appropriate showing of entitlement. We believe Rule 5.1 as adopted reasonably accommodates these divergent views.

5. Assignment of Proceeding

This proceeding is assigned to Commissioner Susan P. Kennedy and ALJ Steven Kotz.

Findings of Fact

1. Advice letters never involve evidentiary hearings.
2. A “cover sheet” that concisely summarizes all critical information about a given advice letter will help ensure that the advice letter is complete and easy to review, and limit the need for information requests after the advice letter is filed.
3. The Commission is currently receiving almost 5000 advice letters per year; thus, both Commission staff and third parties must be able to analyze advice letters rapidly.
4. Greater utilization of the Internet for notice and service of documents will enable persons interested in particular utilities or particular subjects to obtain relevant advice letters easily.
5. Indeterminacy regarding the date of filing, which may in turn affect the effective date, creates problems both for utilities (who must take steps to implement any actions proposed in an advice letter), customers (who might be planning service changes on the basis of an advice letter), and anyone who might want to protest or otherwise respond to an advice letter.
6. Because advice letters, by design, generally concern matters that are not expected to raise factual or policy issues, the large majority of advice letters will be subject to Industry Division disposition.
7. Advice letters, being informal, are generally ill-suited to resolving material factual issues; further, the interpretation of a statute or Commission order may require consideration by the Commission itself.

8. Dealing with a problematic advice letter will generally require more than the 30 days provided in the initial review period. Delegating authority to Commission staff to suspend the effectiveness of a problematic advice letter for no more than 120 days beyond the initial review period is reasonable in order to allow sufficient time for the reviewing Industry Division to prepare an appropriate disposition.

9. Generally, the appellant of an advice letter disposition would be the utility or a protestant; third parties who had notice and an opportunity to participate in review of the advice letter normally should not be allowed to voice objections for the first time on appeal.

Conclusions of Law

1. The reviewing Industry Division may approve or reject any advice letter for which the approval or rejection would be a “ministerial” act, as that term is used in D.02-02-049.

2. The reviewing Industry Division may reject factual or legal arguments that are clearly erroneous.

3. Whether an advice letter is rejected without prejudice or withdrawn, the utility has the option of filing an application or filing a new advice letter with modifications intended to remove the objections to the prior advice letter.

4. The Commission may delegate to the reviewing Industry Division the authority, pursuant to Pub. Util. Code § 455, to suspend the effectiveness of an advice letter.

5. Regarding suspensions by staff, the interim procedure authorized in Resolution M-4801 and D.02-02-049 was subject to further modification by order in this proceeding. Today’s order modifies those prior orders chiefly by limiting the delegated suspension authority to a single suspension, namely, the period of

up to 120 days expressly provided by Pub. Util. Code § 455. The suspension period begins immediately after the 30-day initial review period.

6. Under Pub. Util. Code § 455, the Commission has up to 330 days to process an advice letter.

7. If the Commission's deliberation on a resolution prepared by the Industry Division extends beyond 150 days after filing of the advice letter, the suspension should be automatically extended for a further period, not to exceed 180 days, until the Commission acts on the resolution.

8. Third party challenges to the disposition of an advice letter should be summarily rejected if entitlement to appeal is not demonstrated.

9. When adopted, GO 96-B should fully integrate the rules adopted in today's decision, those previously adopted in D.01-07-026 and D.02-01-038, and the remaining proposed general and industry-specific proposed rules, in such form as the Commission may finally adopt them. GO 96-B should then wholly supersede GO 96-A.

10. A Commission resolution that disposes of an advice letter should contain, as an attachment, a list of all persons served with the resolution, including the utility filing the advice letter, persons protesting or responding to the advice letter, and any third party whose name and interest in the relief sought had appeared on the face of the advice letter.

11. Today's order should be made effective immediately, and the adopted rules should be made applicable to all advice letters filed on or after 90 days from the effective date. For those advice letters, the adopted rules should supersede any inconsistent provision of previously adopted rules on advice letters generally, such as GO 96-A.

THIRD INTERIM ORDER

IT IS ORDERED that:

1. The rules set forth in the Appendix (Rules) to this Third Interim Opinion are adopted.
2. The Rules shall apply to all advice letters filed on or after 90 days from the effective date of today's order.
3. This proceeding remains open to deliberate upon final adoption of General Order 96-B.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Advice Letter Filing, Service, Suspension, and Disposition

1. Applicability

As used in the following rules, “utility” means a public utility that is a gas, electric, telephone, water, sewer system, pipeline, or heat corporation, as defined in the California Public Utilities Code, “Industry Division” means the Energy, Telecommunications, or Water Division, or their successors, and “advice letter” means an informal request by a utility for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility’s tariffs then in effect.

These rules apply to advice letters. The primary use of an advice letter is to transmit tariff sheet changes. An advice letter may be used for other purposes only to the extent authorized by statute or Commission order.

These rules do not apply to an information-only filing, such as a report, that is filed by a utility with the Commission pursuant to statute or Commission order but that is not filed in connection with a request for Commission approval, authorization, or other relief. These rules also do not apply to any matter requiring an evidentiary hearing or to a formal proceeding, whether initiated by application, complaint, petition, order instituting investigation or rulemaking, or order to show cause.

These rules supersede rules previously adopted to govern advice letters generally, such as General Order 96-A, to the extent that the previously adopted rules are inconsistent with these rules. The procedures in these rules for suspension of advice letters and deemed approval do not apply to advice letters that become effective less than 30 days from filing pursuant to statute or Commission order. These rules do not modify procedures previously adopted for specific kinds of advice letters, even where those procedures are inconsistent with those contained in these rules.

1.1 Code of Ethics

Rule 1 (“Code of Ethics”) of the Commission’s Rules of Practice and Procedure (California Code of Regulations, Title 20, Division 1, Chapter 1) shall apply to all matters governed by these rules.

1.2 Computation of Time

As used in these rules, “day” means a calendar day, and “business day” means a calendar day except for Saturdays, Sundays, and weekdays when the Commission’s offices are closed, due either to a State holiday or to an unscheduled closure (e.g., an emergency or natural disaster). The Commission’s Internet site (www.cpuc.ca.gov, under “About CPUC”) will maintain a list of State holidays for the current calendar year and a list for the following calendar year as soon as that list is available.

When these rules set a time limit for performance of an act, the time is computed by excluding the first day (i.e., the day of the act or event from which the designated time begins to run) and including the last day. If the last day does not fall on a business day, the time limit is extended to include the first business day thereafter.

2. Advice Letter Contents

2.1 Cover Sheet

A utility filing an advice letter shall include with its advice letter a cover sheet, which shall state the date when the utility served the advice letter and filed it with the reviewing Industry Division. The cover sheet shall also be served with the advice letter. The cover sheet shall state that a protest or response to the advice letter must be filed with the reviewing Industry Division within 20 days of the date of the advice letter’s filing and served on the same day on the utility. The cover letter shall summarize the contents of the advice letter, as follows:

- (1) indicate requested effective date;
- (2) indicate service affected by the advice letter;
- (3) indicate category of affected service (where applicable, as in the Commission’s New Regulatory Framework for the Telecommunications Industry);
- (4) briefly describe change to existing service (where applicable) or other change proposed by the advice letter;
- (5) indicate percent impact of proposed change on current rates or charges for affected service (where applicable);

- (6) cite Commission orders (by decision or resolution number and ordering paragraph) and Public Utilities Code or other statutory provisions (by section) related to the substance of the advice letter, and identify as compliance filing (where applicable);
- (7) refer to the utility's other pending advice letters that relate to the same tariffs or are otherwise affected by the proposed change;
- (8) if the advice letter replaces a withdrawn or rejected advice letter, identify the prior advice letter and the differences between it and the new advice letter;
- (9) indicate whether the utility believes disposition of the advice letter by Commission resolution is necessary or appropriate;
- (10) show contact person, telephone number, and e-mail address for additional information regarding the advice letter; and
- (11) show postal address and e-mail address of the utility and of the reviewing Industry Division for protests regarding the advice letter.

If an advice letter does not include a complete cover sheet, as described above, the reviewing Industry Division may reject the advice letter without prejudice or extend the protest period unless and until the utility files and serves the information that is missing or incomplete.

2.2 Form and Content

A utility shall:

- (1) number the advice letter sequentially, beginning with No. 1 for the first advice letter filed by the utility for each type of service rendered, followed by a letter designation for the type of service if the Industry Division so requires;
- (2) attach the tariff sheets (new or revised) showing the changes that would be made by the advice letter, and list the numbers and titles of the new tariff sheets (if any) and the numbers of tariff sheets proposed to be canceled (if any). If the advice letter proposes to change tariff sheets currently in effect, the proposed changes shall be shown by providing either (i) a redlined version of the tariff sheets, or (ii) the tariff sheets as currently in effect and as proposed with the changes indicated by appropriate symbols along the right-hand margin, using

the symbols set forth in the utility's preliminary statement. If the reviewing Industry Division will assign sheet numbers, so indicate. A tariff sheet number may not be used more than once;

- (3) state whether any deviations would be created, service withdrawn from any present customer, or more or less restrictive conditions imposed;
- (4) if establishing a new non-competitive service (or in the case of a telephone utility, a new Category 1 or 2 service), describe the new service and state its impacts (if any) on rates and service to customers not receiving the new non-competitive service, its impacts (if any) on customer privacy and competitive markets, any educational efforts the utility plans in connection with the new service, and any transactions with the utility's affiliates in the provision of the new service;
- (5) if seeking approval of a contract or other deviation from tariffed service, attach a copy;
- (6) attach analysis and workpapers used to justify the relief sought in the advice letter, or if the analysis and workpapers are voluminous, provide them within two business days upon request;
- (7) cite the statute and/or Commission order establishing the notice requirements applicable to the advice letter, and describe how those requirements were satisfied; and
- (8) attach the service list to the original advice letter filed with the reviewing Industry Division, or if the list is identical to a list used previously by the utility, cite the number and date of the advice letter or application that is the source of the list.

In addition, if an advice letter requests a change to a Commission resolution addressing a prior advice letter of the utility, the new advice letter shall specify the resolution to which a change is requested, and shall set forth the following information by way of notice:

- (9) The advice letter is subject to Public Utilities Code Section 1708, which states in pertinent part that the Commission may, "upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it."

- (10) A person wishing to request an evidentiary hearing must file and serve a timely protest to the advice letter. The protestant must expressly request and explain the need for an evidentiary hearing. The explanation must identify material disputed facts and explain why a hearing must be held.
- (11) Any right a person may otherwise have to an evidentiary hearing will be waived if that person does not follow the above procedure for requesting one.

If an advice letter omits any applicable contents, as described above, the reviewing Industry Division may reject the advice letter without prejudice or extend the protest period unless and until the utility files and serves the complete advice letter.

3. Filing and Service

3.1 Service Lists

Each utility shall maintain at least one advice letter service list, which shall include the postal and e-mail addresses, as appropriate, of all persons on the list. To the extent practical, the utility shall maintain separate lists for different types of advice letters (for example, differentiating between water utility districts, customer classes, or particular services), and shall identify the separate lists at the utility's Internet site, so that persons may request and receive only those advice letters of interest. The utility shall include on the service list any person who requests such inclusion, and may periodically confirm the desire of any currently listed person to remain on the list. On or before the date when the utility files an advice letter, it shall serve the advice letter without charge on all persons listed for that type of advice letter.

3.2 Service by Internet

For purposes of these rules, any person may accept service by Internet. A person indicates acceptance of such service by providing an e-mail address along with a postal address to the utility, Industry Division, or third party serving a document on the person. Notwithstanding such acceptance, the utility, Industry Division, or third party shall make alternative service (including service by first-

class mail, personal delivery, or facsimile transmission) immediately whenever the serving party receives notification that service by Internet is unsuccessful.

A utility shall serve its advice letters and related documents by Internet on any person on its advice letter service list who provides an e-mail address. Any such person shall serve that person's advice letter protest and related documents by Internet on the utility filing the advice letter.

3.3 Filing Advice Letters and Related Documents

Advice letters and related documents (e.g., protests, responses, replies, and requests for review) shall be filed with the reviewing Industry Division. The Executive Director may develop procedures for the electronic filing of advice letters; the related documents may be filed electronically under Industry Division procedures. The Industry Division will report advice letters and related documents, and the date of their receipt, in the Daily Calendar.

The date of filing of an advice letter or related document shall be the date of receipt by the reviewing Industry Division and shall be used for purposes of calculating the 20-day protest period, the 30-day initial review period, the period of suspension under Rule 4.6, or the last day for any filing or other deadline that may be computed from the date of filing under these rules. The reviewing Industry Division may reject without prejudice an advice letter due to defective service or omitted contents. Notwithstanding the Industry Division's acceptance of an advice letter for filing, a defect or omission that becomes apparent during review of the advice letter may require rejection of the advice letter without prejudice if the utility fails, upon request, to promptly cure the defect or omission.

Advice letters, protests, responses, and replies are public records, and are open to public inspection, except as provided under the Public Records Act and General Order 66-C (or the then-current successor to General Order 66-C). Any provision the Commission may make, now or in the future, for electronic notice of, and access to, the Commission's public records shall apply to such documents.

3.4 Serving Advice Letters and Related Documents

On or before the date an advice letter is filed, and unless otherwise directed by Commission order, the utility shall serve the advice letter and cover sheet (1) on the utility's advice letter service list, and (2) on any other third parties as specified by statute or other Commission order. Such service shall be by Internet to the extent required by Rule 3.2. In addition, the utility shall make paper service of the advice letter on the Office of Ratepayer Advocates by first-class mail or personal delivery. The requirement to serve the Office of Ratepayer Advocates does not apply to a utility that is a sewer system corporation or a Class B, C, or D water corporation. In addition, the Office of Ratepayer Advocates may waive or modify this service requirement to better accommodate small utilities or alternative service media.

After filing an advice letter, and pending its disposition, the utility shall promptly provide a copy of the advice letter to anyone so requesting. Such provision shall be without charge to anyone who currently receives service from the utility, or to anyone receiving the advice letter by Internet.

The following additional requirements apply to service of any advice letter that requests a change to a Commission resolution. The utility filing such an advice letter shall serve it on anyone who filed a protest or response to the prior advice letter addressed in the resolution, any third party whose name and interest in the relief sought appeared on the face of that prior advice letter (as where the advice letter sought approval of a contract or deviation for the benefit of such third party), and any other persons who had been served with the resolution.

4. Advice Letter Review and Disposition

4.1 Protests and Responses

A protest is a document that objects in whole or in part to the relief requested in an advice letter. The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name, telephone number, postal address, and (where appropriate) e-mail address of the protestant; and statement that the protest was sent to the utility no later than the date on which the protest was filed with the reviewing Industry Division.

If the protestant believes that the Commission should hold an evidentiary hearing, the protest must expressly request and explain the need for an evidentiary hearing. The explanation must identify material disputed facts and say why a hearing must be held. Any right a protestant may otherwise have to an evidentiary hearing will be waived if the protestant does not follow this procedure for requesting one.

A response differs from a protest in that a response unconditionally supports the relief requested in the advice letter, and may provide useful information regarding the advice letter.

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter. Within 20 days of the date of filing of the advice letter, the protest or response shall be filed with the reviewing Industry Division and served on the same day on the utility. After filing a protest, and pending disposition of the advice letter, the protestant shall promptly provide a copy of the protest to anyone so requesting.

4.2 Grounds for Protest

An advice letter may be protested on one or more of the following grounds:

- (1) The utility did not properly serve or give notice of the advice letter;
- (2) The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;
- (3) The analysis, calculations, or data in the advice letter contain material errors or omissions;
- (4) The relief requested in the advice letter is pending before the Commission in a formal proceeding; or
- (5) The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; or
- (6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory, provided that such a protest may not be made where it would require relitigating a prior order of the Commission.

As illustrated in the following examples, a protest may not rely on policy objections to an advice letter where the relief requested in the advice letter follows rules or directions established by statute or Commission order applicable to the utility.

Example 1. Where the Commission has approved a rate change, an advice letter submitting tariff sheets in compliance with the Commission order approving the rate change is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.

Example 2. Where the Commission does not regulate the rates of a specific type of utility, an advice letter submitting a rate change by a utility of the specified type is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.

Example 3. Where the Commission has established a rate band within which a utility is free to set rates for a specific type of service, an advice letter submitting a rate change within the band for a service of the specified type is not subject to protest on the grounds that the rates are unjust, unreasonable, or discriminatory.

In all of the above examples, the advice letters may still be protested on other grounds. For example, if the rate change in example 3 falls outside the rate band or applies to a service other than of the specified type, the advice letter would violate the Commission order approving the rate change and is subject to protest on that ground.

4.3 Replies

The utility filing an advice letter shall reply to each protest and may reply to any response. Any such reply shall be filed with the reviewing Industry Division within five business days after the end of the protest period, and shall be served on the same day on each person who filed a protest or response to the advice letter. The protestant may not reply to the utility's reply.

4.4 Late-Filed Protest or Response

The reviewing Industry Division may consider a late-filed protest or response. If an Industry Division considers a late-filed protest or response, it will so notify the utility, and the utility shall have five business days from the date of issuance of the notice within which to reply to the late-filed protest or response.

4.5 Additional Information; Supplements

An Industry Division, to assist its review of an advice letter, may request additional information from the utility. The utility shall respond to the request within five business days unless the Industry Division agrees to a later response, and the Industry Division may reject the advice letter if the utility does not respond promptly and fully. If the Industry Division, after considering the additional information, determines that material factual issues remain, the Industry Division will reject the advice letter without prejudice.

A utility may make minor revisions or corrections to its advice letter at any time before the requested effective date by filing a substitute sheet with the reviewing Industry Division. Changes that generally may be made by substitute sheet include: a correction of a typographical or other insubstantial error; a language clarification; or a later effective date.

The utility shall file a supplement or withdraw the advice letter without prejudice in order to make major revisions or corrections. A substitute sheet or supplement shall be filed and served in the same manner and on the same persons as the advice letter, plus any other persons who have filed a protest or response. A supplement shall bear the same identifying number as the advice letter but shall have a letter suffix ("A" for the first supplement, "B" for the second supplement, etc.).

The filing of a supplement, or of additional information at the request of the reviewing Industry Division, does not automatically continue or reopen the protest period or delay the effective date of the advice letter. The reviewing Industry Division, on its own motion or at the request of any person, may issue a notice continuing or reopening the protest period. Any new protest shall be limited to the substance of the supplement or additional information.

4.6 Initial Review Period; Suspension; Status Report

Except for those advice letters that by statute or Commission order are authorized to go into effect less than 30 days after filing, the initial review period for an advice letter is the 30 days immediately following the date of filing. No later than the last day of the initial review period, the reviewing Industry Division will notify the utility and any protestants if disposition of the advice letter will not occur within the initial review period. The Industry Division may notify the utility, and any protestant who has provided an e-mail address, by Internet.

The Industry Division's notification will suspend the advice letter's effectiveness and will state the reason for the suspension and its expected duration, which will not exceed 120 days from the end of the initial review period unless the utility agrees in writing to a longer suspension period. For any advice letter so suspended, the reviewing Industry Division will proceed promptly with the disposition of the advice letter under Rule 4.7 or Rule 4.8, as appropriate. If the reviewing Industry Division determines that a suspended advice letter requires disposition by the Commission, and the Commission's deliberation on the resolution prepared by the Industry Division extends beyond the expiration of the suspension period, the suspension is automatically extended for a further period, and the Industry Division will so notify the utility and protestants, as above. The further period of suspension will run until the Commission acts on the resolution, but will not exceed 180 days. If the further period ends before the Commission rejects or otherwise acts on the advice letter, the advice letter (if subject to Public Utilities Code Section 455) becomes effective by operation of law on the day after the further period ends.

Each reviewing Industry Division will publish and keep current an advice letter suspension status report at the Commission's Internet site. The report will include the following information for each currently suspended advice letter: identification of the advice letter by utility and advice letter number; date of suspension; reason(s) for suspension; and projected date of disposition. The report will be updated, as needed, to reflect new suspensions and any change of status of a suspended advice letter, including disposition or withdrawal of the advice letter.

4.7 Industry Division Disposition

A utility shall designate in the advice letter whether the utility believes the advice letter is subject to Industry Division disposition. The utility's designation is not binding on the reviewing Industry Division.

The Commission intends by this rule to make advice letters subject to Industry Division disposition in all instances where the delegation of such authority to an Industry Division is lawful.

An advice letter is subject to disposition by the reviewing Industry Division whenever such disposition would be a "ministerial" act, as that term is used regarding advice letter review and disposition. (See Decision 02-02-049.) Industry Division disposition is appropriate where statutes or Commission orders have required the action proposed in the advice letter, or have authorized the action with sufficient specificity, that the Industry Division need only determine as a technical matter whether the proposed action is within the scope of what has already been authorized by statutes or Commission orders. In addition, the Industry Division will reject any advice letter where the advice letter or workpapers are clearly erroneous, including without limitation where there are clear inconsistencies with statute or Commission order.

An advice letter will be subject to Industry Division disposition even though its subject matter is technically complex, so long as a technically qualified person could determine objectively whether the proposed action has been authorized by the statutes or Commission orders cited in the advice letter. Whenever such determination requires more than ministerial action, the disposition of the advice letter on the merits will be by Commission resolution, as provided in Rule 4.8.

Notwithstanding a timely protest, the reviewing Industry Division may approve an advice letter that is subject to disposition under this rule and is otherwise proper, if the protest either (1) is not made on proper grounds as set forth in Rule 4.2, (2) may be rejected on a technical basis as discussed in this rule, or (3) is clearly erroneous.

The Industry Division will review each advice letter filed with it, together with any timely protests, responses, and replies. If the Industry Division, in light of such review, concludes that the advice letter is subject to disposition under this rule (including a deemed approval pursuant to the next paragraph), the Industry Division will report its disposition at the Commission's Internet site. If

the advice letter is approved, the Industry Division will either (1) notify the utility by e-mail on the Internet, or (2) return to the utility a complete copy of the advice letter with the effective date stamped on each tariff sheet.

An advice letter that is subject to Public Utilities Code Section 455 or that implements a rate increase previously approved by the Commission is deemed approved if, at the end of the initial review period, the Industry Division has not suspended the advice letter (as provided in Rule 4.6). For advice letters for which these rules do not establish an initial review period (because statutes or Commission orders have authorized them to go into effect less than 30 days after they are filed), these rules do not provide procedures for suspension and effectiveness; instead the procedures for suspension, if any, and effectiveness are those contained in the statutes and Commission orders authorizing the shorter period.

In all cases where there is Industry Division disposition of an advice letter (including “deemed approval”), the Industry Division will issue a written disposition. If the Industry Division rejects an advice letter or grants a protested advice letter, the Industry Division’s disposition will state the basis for rejecting the advice letter or the protest. The Industry Division will serve the disposition on the utility and on any person filing a protest or response to the advice letter. Service on the utility, and on any person who is entitled to receive the disposition and has provided an e-mail address, may be by Internet.

If the reviewing Industry Division has suspended an advice letter that the utility properly filed for disposition under this rule, the Industry Division, prior to the expiration of the suspension period, will either (1) issue its disposition, or (2) prepare for the Commission’s consideration and place on a Commission meeting agenda a resolution containing the Industry Division’s analysis and recommendation regarding the advice letter. The Commission may adopt the resolution or modify it in whole or in part.

4.8 Disposition by Resolution

Except for those circumstances in which, as provided in Rules 2.1, 2.2, 4.5, or 4.7, the reviewing Industry Division may approve or reject an advice letter, the reviewing Industry Division will prepare and place on the Commission’s meeting agenda a resolution approving, rejecting, or modifying any advice letter filed with the Industry Division. The resolution will contain the Industry

Division's recommended disposition and analysis supporting such disposition. The resolution will also contain an attachment listing all persons served with the resolution, including the utility filing the advice letter, persons protesting or responding to the advice letter, and any third party whose name and interest in the relief sought appear on the face of the advice letter.

The Commission may adopt the resolution or modify it in whole or in part. After the Commission has acted on a resolution, the resolution will be served on the utility, on any person filing a protest to the advice letter, and on any other party to the resolution. (See Rule 77.7 of the Rules of Practice and Procedure.) The disposition of the advice letter will be reported at the Commission's Internet site. If the advice letter is approved, the Industry Division will either (1) notify the utility by e-mail on the Internet, or (2) return to the utility a complete copy of the advice letter with the effective date stamped on each tariff sheet.

5. Review; Application for Rehearing of Resolution

5.1 Review of Industry Division Disposition

The utility or a person filing a protest, or any third party whose name and interest in the relief sought appear on the face of the advice letter may request Commission review of an Industry Division disposition. In exceptional circumstances, a person who has an interest in the advice letter but who did not file a protest may request Commission review. The request must explain the circumstances that entitle the person to make the request (e.g., the person was unable to file a protest or filed a response supporting the advice letter). The request for Commission review shall be filed with the reviewing Industry Division within 10 days after the issuance of the disposition, shall be served on the utility, all persons filing protests or responses, and any third party whose name and interest in the relief sought appear on the face of the advice letter, and shall set forth specifically the grounds on which the requester considers the disposition to be unlawful or erroneous. Upon filing of a timely request for Commission review, the Industry Division will prepare and place on the Commission's meeting agenda a proposed resolution, and will serve it on the requester and all others on whom the request was served. Pending Commission action on the proposed resolution, the advice letter will take effect if it was approved under the Industry Division disposition.

5.2 Application for Rehearing of Resolution

Pursuant to Sections 1731 to 1736 of the Public Utilities Code and Rules 85 to 86.7 of the Commission's Rules of Practice and Procedure, the utility filing an advice letter, any person filing a protest to the advice letter, and any other person who was a party to the resolution under Rule 77.7 of the Rules of Practice and Procedure may apply for rehearing. The application for rehearing shall set forth specifically the grounds on which the applicant considers the resolution to be unlawful or erroneous.

The application for rehearing shall be filed with the Commission's Docket Office, which will assign a docket number to the application. On the same day that it is filed, the application for rehearing shall be served on the reviewing Industry Division and on the same persons who are required to be served with the resolution under Rule 5.1.

6. Petition for Modification; Request for Extension

A Commission resolution issued under these rules is subject to petition for modification to the same extent and under the same procedures as provided, with respect to Commission decisions, by Rule 47 of the Commission's Rules of Practice and Procedure, except that the procedure for filing and serving such a petition is that provided under Rule 5.2 above for filing and serving an application for rehearing.

For an extension of time to comply with a Commission resolution addressing an advice letter, the utility that filed the advice letter shall send a written request to the Executive Director, with copies of the request sent concurrently to the appropriate Industry Division and to all persons on whom the resolution was served. The request, or facsimile of the request, must be received by the Executive Director at least three business days before the date of compliance set in the resolution. If the extension is granted, the utility shall promptly inform all persons on whom the resolution was served of the new date for compliance.

(END OF APPENDIX)